



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 17, 2010

CBCA 1932-RELO

In the Matter of ARTHUR HUBBARD

Arthur Hubbard, San Francisco, CA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration,
Department of Justice, Springfield, VA, appearing for Department of Justice.

DRUMMOND, Board Judge.

Claimant, Arthur Hubbard, a former employee of the Drug Enforcement Administration (DEA), asks that we review his agency's demand for repayment of \$6831, costs the agency paid to a relocation services contractor in connection with a home sale claimant failed to complete as planned.

In 2008, DEA notified claimant it was going to transfer him from San Francisco, California, to Arlington, Virginia, with a reporting date of August 3, 2008. Among other things, the agency authorized reimbursement of real estate expenses. After receiving the orders, claimant engaged the services of the agency's relocation services contractor for the sale of his home. Claimant never moved to Virginia, however. After the agency extended his transfer date at his request, claimant retired. Claimant later accepted a job with a contractor working at the DEA office in San Francisco. He eventually returned to federal service.

DEA paid the relocation services contractor \$6831 for expenses incurred preparatory to selling claimant's home. These expenses included the costs for two appraisals, a termite inspection, and several inspections of specific aspects of the house. DEA demanded that claimant pay the agency the \$6831 it had paid to the relocation services contractor on his behalf.

Claimant asked the agency to waive payment of the debt, asserting that (1) he remained in the employ of the Federal Government because he worked as a contractor at the DEA office; (2) there is nothing in his service agreement that requires the twelve months of service following a transfer to be consecutive, and he subsequently returned to federal service after a break of several months; (3) the service agreement was never operative because the condition precedent, reporting to a new duty station, never occurred, and consequently, the twelve-month period never began to run; and (4) the relocation services contractor never made an offer on his house and instead required costly repairs. The agency, after considering each of his reasons, refused to waive payment of the \$6831, concluding that his retirement was not for reasons beyond his control and acceptable to the agency. On April 16, 2010, claimant paid the \$6831.

Discussion

Claimant disputes the agency's right to retain the \$6831, now giving as his principal reasons for not transferring that he believed the sale of his home would have resulted in a loss and that he was misinformed concerning his liability for certain relocation expenses even if he did not transfer. The agency has addressed each of these reasons and provided a reasonable basis for its determination that these justifications are not acceptable to DEA.

Pursuant to statute, the Government may pay relocation expenses when an employee transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724(a) (2006). Reimbursement for such relocation costs is conditioned upon an employee entering into agreement to remain in government service for a period of not less than twelve months following the transfer. It further provides that if the employee violates the agreement, unless he is separated for reasons beyond his control that are acceptable to the agency, the money spent for such expenses "is recoverable from the employee as a debt due the United States." 5 U.S.C. ¶ 5724(i); 41 CFR 302-2.14 (2008); *see Nancy C. Johnson*, GSBCA 16612-RELO, 05-1 BCA ¶ 32,931. This statute and regulation concern only the situation in which an employee transfers and then leaves government service within twelve months of the move. That is not the situation here. Claimant retired without ever transferring to his new duty station. The General Services Board of Contract Appeals, our predecessor in deciding these cases, considered this situation and held that the agency may recover its costs, unless the employee was precluded from completing the transfer by a reason beyond his control and acceptable to the agency. *Thomas M. Stan*, GSBCA 16679-RELO, 05-2 BCA ¶ 33,063. It is within DEA's discretion to determine whether, under the particular circumstances presented, claimant's separation from service was voluntary or for a reason beyond claimant's control and acceptable to the agency. We will not question DEA's exercise of its discretion so long as it has a reasonable basis. *Jeanne Hehr*, GSBCA 16936-RELO, 06-2 BCA ¶ 33,431, at 165,741.

Here, the agency did not abuse its discretion when it decided that claimant's retirement was not for reasons beyond his control and acceptable to the agency. Claimant suggests that he was misled about his responsibility for the debt. He further suggests that he believed the sale of his home would have resulted in a considerable loss, such that, under DEA policy, he could have his transfer postponed. Such vague statements are not sufficient for overturning the agency's determination. Claimant has offered no persuasive evidence which demonstrates that his retirement was anything other than voluntary. The facts that claimant worked for a contractor at a DEA office, and that he later returned to federal service, do not affect this conclusion. In the absence of evidence to the contrary, the agency's decision that his retirement was not beyond his control and acceptable to the agency was reasonable and well within the agency's discretion.

Decision

Accordingly, the Board denies this claim.

JEROME M. DRUMMOND
Board Judge

